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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RUSSELL BRADFORD WOODS, Appellant.	)	2 CA-CR 2008-0036 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20072238

Honorable Gus Aragón, Judge

AFFIRMED

Thomas Jacobs — Tucson
Attorney for Appellant

P E L A N D E R, Chief Judge.

¶1 After a jury found Russell Bradford Woods guilty of aggravated domestic violence, he was convicted and sentenced to a presumptive term of 1.5 years in prison. Woods's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967),

and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has reviewed the record without finding an arguable issue to raise on appeal and asking this court to search the same record for fundamental error. Counsel has complied with *Clark* by "setting forth a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Woods has not filed a supplemental brief. Viewing the evidence in the light most favorable to upholding the verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), we are satisfied the record supports counsel's recitation of the facts.

¶2 In summary, Rosa C. testified that she and Woods were living together in May 2007 when, during an argument, Woods struck her with his hands and a belt, causing her to suffer a black eye, a cut lip, and multiple bruises. Although Rosa had recanted these allegations before trial, she testified that her recantation had been untrue and had been motivated by threats, her fear of being alone, and her desire to have Woods released from jail. Certified court records admitted in evidence and the testimony of Woods's supervising probation officer established that Woods had previously been convicted of four separate domestic violence offenses committed in April and May 2004 and April 2005.[1]

¶3 Counsel notes that Woods had objected at trial to a Tucson Police Department domestic violence detective's offering expert testimony about the incidence of recantations

[1]Although Woods had pointed out at trial that two of his convictions bore the same offense date, review of the criminal citations establishes two separate offenses committed on that date, one in the morning and another in the evening.

by domestic violence victims in general and reasons these victims might recant their initial statements despite the truth of their allegations. He suggests the admission of such expert testimony might have presented an appealable issue in other circumstances, but because Rosa herself testified that her recantation had been untrue, any error in this case would have been harmless.

¶4 We note first that, at trial, Woods did not challenge the admissibility of the detective's testimony on substantive grounds but objected only on the ground that the detective had not been properly disclosed as an expert . Accordingly, the argument counsel now suggests would be reviewed only for fundamental error. *See State v. Moody*, 208 Ariz. 424, ¶ 40, 94 P.3d 1119, 1136 (2004). We see no abuse of discretion, much less fundamental error, in the court's permitting the detective to report conclusions from scholarly sources about why some domestic violence victims recant their accusations prior to trial. *See State v. Moran*, 151 Ariz. 378, 384, 728 P.2d 248, 254 (1986) ("[E]vidence explaining why recantation is not necessarily inconsistent with the crime having occurred [may] aid[] the jury in evaluating the victim's credibility.").

¶5 During cross-examination, however, Woods asked the detective his opinion of why Rosa, in particular, had recanted her original statement. The detective responded, "I'm not a mind reader, but for whatever reason, she . . . had been influenced or threatened or felt worthless enough that she had nowhere else to go but there, being with [Woods], and in [Woods]'s house, and she was recanting her statement for those reasons." This "more

particularized opinion" about Rosa's credibility and, implicitly, the truth of her original statement was inadmissible and potentially prejudicial. *Id.* at 382, 728 P.2d at 252. We conclude, however, that Woods would be precluded from raising this aspect of the detective's testimony as error because he invited the error at trial.[2] *See Moody*, 208 Ariz. 424, ¶ 111, 94 P.3d at 1148.

¶6 Moreover, in light of Rosa's own testimony about her reasons for falsely recanting her initial statement to the police, we fail to see how the detective's speculation about her motives could have affected the jury's verdict. *See State v. Henderson*, 210 Ariz. 561, ¶ 27, 115 P.3d 601, 609 (2005) (to establish fundamental error, defendant must show that, but for the error, "a reasonable jury . . . could have reached a different result"); *cf. State v. Lopez*, 217 Ariz. 433, n.2, 175 P.3d 682, 685 n.2 (App. 2008) (erroneous admission

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[2]The facts of this case are distinguishable from those in *State v. Lindsey*, 149 Ariz. 472, 476-78, 720 P.2d 73, 77-79 (1986), in which our supreme court found a defendant had not invited error where he had moved to preclude expert testimony on substantive grounds and then sought to rebut the expert's impermissible direct testimony that "in general, most people in the field feel that it's a very small proportion [of complaining witnesses who] lie [about incest]." In this case, after Woods objected to the state's asking the detective "whether it's common or uncommon for victims of domestic violence to recant" their allegations later, the question was rephrased as "approximately how often do you see" recantations by victims. The detective estimated that, in his experience, victims had recanted their initial statements in "just less than half" of cases. Unlike the expert's opinion in *Lindsey*, this estimate of the frequency of recantations did not go to the veracity of Rosa's initial statement or the statements of domestic violence victims generally, *see id.* at 474-75, 720 P.2d at 75-76, and the detective acknowledged on cross-examination that one reason a victim might recant is that she "didn't tell the truth in the first place." We note that the state had advised the court earlier in the proceedings that it would be impermissible for the detective to opine about Rosa's reasons for recanting her allegations in this case, and nothing in the state's direct examination elicited such an opinion.

of hearsay harmless where cumulative to victim's own testimony). Thus, even if the detective's impermissible testimony had not been invited by Woods, it would not be fundamental error, as it was neither prejudicial nor an "'error of such magnitude that the defendant could not possibly have received a fair trial.'" *Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607, *quoting State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984).

¶7 Pursuant to our obligation under *Anders*, we have reviewed the trial court record in its entirety and have searched the record for error. We have found substantial evidence to support the jury's verdict and no error that would warrant reversal. Accordingly, we affirm Woods's conviction and sentence.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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PHILIP G. ESPINOSA, Judge